IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1694 of 2003
AND
FIRST APPEAL NO. 1790 of 2003
with
CIVIL APPLICATION NOS.6322 & 6727 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEEPAK DEVAJIBHAI DHANDHUKIYA
Versus
DHANJIBHAI PITANBAR GORAJIYA

MR JAYANTI K THORIA for appellants/applicants in both appeals
MR SANDIP C SHAH for Respondents-claimants in both appeals
..... for Respondent No. 3-6

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/09/2003

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

Admit. Learned Counsel Mr.Sandip Shah waives service of notice of admission on behalf of respondents-claimants.

2. At the instance of the parties, we are not assigning any reasons.

3. These two appeals arise out of the common judgment and award dated 11th July 2003 passed by the Motor Accident Claims Tribunal (Aux.II), Ahmedabad (Rural), in M.A.C.P.Nos. 583 and 584 of 1994, rejecting the claim of the appellants who are husbands of deceased Swatiben and Nikitaben, respectively, for full amount and instead awarding 20% of the compensation amount to them and 80% to Dhanjibhai Gorajia and Sharadaben Gorajia, who are the parents of the two deceased.

4. According to the appellants, being husbands, they are having better claim than the parents of the deceased and therefore, the Tribunal has committed an error in fixing the apportionment by giving major share of the compensation i.e. 80% in favour of the parents of the deceased.

It may be stated that the parents of the deceased have also filed First Appeals Nos.1808 and 1809 of 2003, challenging the very award passed by the Tribunal on the ground of compensation being inadequate and have prayed for enhancement of it. The Tribunal has given reasons for apportionment of the share between the appellants-husbands and the respondents-parents, which have been carefully taken into consideration by us.

5. During the course of hearing of these two appeals, we have suggested the parties to sort out their differences and to find out a way in the matter. For that purpose, the parties had sought time in the matter and ultimately, decided to leave the dispute to the discretion of this Court. Learned Advocates, in presence of their respective clients, have stated that the parties will be agreeable to the apportionment of the amount of compensation by this Court that may be suggested by us.

6. After having given our thoughtful consideration in the matter and considering the facts and circumstances of the case, we are of the opinion that if the compensation is enhanced by 30% in favour of both the

appellants-husbands and 70% in favour of the parents - respondents, that would meet the ends of justice. Likewise, the same ratio shall be maintained in both the appeals preferred by the parents, i.e. First Appeals Nos. 1808 and 1809 of 2003, in case the said appeals are allowed by this Court.

7. Before passing this order, we have suggested the view which we are taking in this matter to the learned Advocates. Needless to say that the learned Advocates have accepted the same in its right spirit. In view of this, we pass the following order:

Both the appeals are partly allowed. The judgment and award dated 11th July 2003 passed by the Motor Accident Claims Tribunal (Aux.II), Ahmedabad (Rural) in M.A.C.P. Nos. 583 and 584 of 1994 is modified to the extent that both the appellants (original claimants) of their respective claim petition shall be paid 30% of the amount of total compensation (at the rate of 30% of the awarded amount to them) and the balance 70% of the compensation amount shall be paid to respondents Nos.1 and 2, i.e. original claimants Nos.2 and 3 respectively of the concerned claim petitions. The amount of compensation at the above ratio shall be made applicable in case this Court allows First Appeals Nos.1808 and 1809 of 2003. Both the appeals, i.e. First Appeals Nos.1694 and 1790 of 2003 are allowed to the above extent only, with no order as to costs.

8. In view of the order passed in the main appeals, the Civil Applications for stay do not survive and they are rejected.

Direct service is permitted.

(Kshitij R. Vyas, J.)

(Akshay H. Mehta, J.)

Sreeram.